

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois-American Water Company	:	
	:	07-0519
	:	
Application for Certificates of Public	:	
Convenience and Necessity to Provide	:	
Water Service to Parcels in Peoria County,	:	
Illinois, pursuant to Section 8-406 of the	:	
Public Utilities Act.	:	

**INITIAL BRIEF OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION**

MATTHEW HARVEY
JAMES V. OLIVERO
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle, Ste. C-800
Chicago, IL 60601
Phone: (217)793-3243
527 East Capitol Avenue
Springfield, IL 62701
Phone: (217) 785-3808
Fax: (217) 524-8928
mharvey@icc.illinois.gov
jolivero@icc.illinois.gov

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Pursuant to 83 Ill. Adm. Code 200.800, Staff witnesses of the Illinois Commerce Commission (“Staff”), by and through its attorneys, hereby files its Initial Brief in the above-captioned proceeding.

I. INTRODUCTION

A. Procedural History

On October 18, 2007, Illinois-American Water Company (“Petitioner”, “IAWC”, or the “Company”) filed an Application seeking issuance by the Illinois Commerce Commission (“Commission”) of a Certificate of Public Convenience and Necessity (“CPCN” or “Certificate”) pursuant to Section 8-406 of the Public Utilities Act (“PUA”), (220 ILCS 5/8-406), authorizing IAWC to construct, operate, and maintain water systems, and in connection therewith, transact a public utility business in an area of Peoria County (“Expanded Area”) adjacent to IAWC’s existing service territory.

Pursuant to proper legal notice, a pre-hearing conference was held on November 6, 2007 and several status hearings were held before a duly authorized Administrative

Law Judge of the Commission at its offices in Springfield, Illinois. A Petition to Intervene was filed by Rural Route 150 Water District ("RR 150") on October 29, 2007. An evidentiary hearing was held on February 27, 2008. Appearances were entered and testimony was presented by IAWC, RR 150, and Staff. At the conclusion of the hearing on February 27, 2008, the matter was marked HEARD and TAKEN.

B. Legal Standards

Requests for Certificates are governed by Section 8-406 of the PUA, which provides, in part:

(b) No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

II. DISCUSSION

A. Overview of Staff's Position

The Company is seeking a Certificate to construct, operate, and maintain water

systems ("Water Service"), and in connection therewith, transact a public utility business in an area of Peoria County ("Expanded Area") adjacent to IAWC's existing service territory shown and legally described on Exhibit A of the Application filed on October 17, 2008.

Staff concurs with the Company that the proposed construction of the Water Systems is necessary and least cost, within the meaning of Section 8-406(b)(1). See Staff Ex. 1.0R, generally.

IAWC witnesses testified that the company is capable of efficiently managing and supervising the construction process. Staff Ex. 1.0R at 9. Based on the information provided by IAWC, Staff is of the opinion that IAWC is capable of managing and supervising the construction of the Water Systems for the Expanded Area, as required by Section 8-406(b)(2). Id.

By statute, IAWC must show that it is capable of financing the proposed construction without adverse financial consequences for the utility or its customers. 220 ILCS 5/8-406(b)(3). Staff recommends in favor of a finding that IAWC has demonstrated that it is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers and recommends that the Commission grant the Certificate to IAWC. Staff Ex. 3.0 at 1-2.

In the event the Commission grants the Certificate, Staff also made recommendations regarding accounting entries and reporting, the certificated service areas, the rules, regulations and conditions of service, and the rates to be applied. Staff Ex. 2.0 at 2. Specifically, the Staff does not object to the accounting entries proposed

by the Company in IAWC Exhibit MJH-1.1, and sees no reason why the Commission should not approve them. Id.

III. STAFF'S POSITION

A. Necessary and Least-Cost Means (Section 8-406(b)(1))

Staff witness Jonathan M. Sperry, a chemical engineer with experience in water engineering, testified that IAWC is in fact proposing the least-cost means for providing water service in the proposed certificated service area. Staff Ex. 1.0R at 9-10. Mr. Sperry stated that the proposed area is contiguous and adjacent to the certificated service area of the Company's existing Peoria District. Id. at 9. Mr. Sperry further stated that the cost of serving the Expanded Area includes the construction of a water main extension into the proposed area. Id. Mr. Sperry gave it as his opinion that it is far more cost-efficient for an existing utility in the area to extend its water mains than it is for a new entity to come into the area and construct new water facilities to establish water service. Id. By thus making use of existing facilities and capacity, Mr. Sperry opined, duplication of water facilities and unnecessary costs will be avoided. Id.

Mr. Sperry understood the company to represent in its Petition that it will take steps to assure that the construction costs are the least-cost means of providing the required water service. Staff Ex. 1.0R at 9. According to Mr. Sperry, IAWC further represents that the sum it will pay for upsizing to install a 12-inch water main - \$118,370, or 34.7% of the total water main extension cost - will not be passed on to customers. Id. at 9-10. Finally, Mr. Sperry stated that he understands that the developer will pay the remainder of the cost, and IAWC will refund the developer's cost as customers attach, in accordance with the water main extension rules. Id. at 10. Mr.

Sperry stated that, based on information currently available to him, including, as mentioned above, the fact that no other entity is currently capable of providing water service to IAWC's potential customers, it is his opinion that IAWC's proposal represents the least-cost option to provide the service in question. Id.

B. Capability to Efficiently Manage and Supervise (Section 8-406(b)(2))

Mr. Sperry, based on his personal inspection of IAWC's water systems, and his review of the company's testimony and responses to various Staff data requests, gave it as his opinion that the company is capable of efficiently managing and supervising construction of the proposed water main extension. Staff Ex. 1.0R at 9. It was Mr. Sperry's further opinion that IAWC has consistently demonstrated that its water systems in Illinois are well operated, efficiently managed and supervised, and its equipment is well maintained. Id.

Mr. Sperry noted that the Peoria District water treatment plant has been maintained so as to enable IAWC to produce an adequate supply of safe water on a timely basis. Staff Ex. 1.0R at 8. Peak demand on the Company's Peoria District water system is approximately 38.0 mgd and average demand is 22.9 mgd, while the estimated average demand for water service from new customers in the Expanded Area is de minimis. Id. The 5-year projected water delivery for the Expanded Area is approximately 0.03 mgd, based on 12.346 million gallons of water usage. Id. The capacity of IAWC's Peoria District water treatment plant and wells is 41.2 mgd, so it is Mr. Sperry's opinion that the Company has adequate capacity to serve new customers in the Expanded Area. Id.

C. Financial Capability (Section 8-406(b)(3))

Staff witness Sheena Kight-Garlich stated that, based upon her review of IAWC's filing, the estimated cost of construction to the Company is diminutive in relation to the Company's financial resources. Staff Ex. 3.0 at 1. In Ms. Kight-Garlich's judgment, the proposed transaction meets the requirement of Section 8-406(b)(3) of the Act. Id. She therefore recommends the Commission find that IAWC is capable of financing the proposed construction without significant adverse financial consequences for the Company or its customers. Id. at 1-2.

D. Accounting

1. Journal Entries and Reporting

As part of its Petition, IAWC requested approval of accounting entries as detailed in IAWC Exhibit MJH-1.1, attached to the Direct Testimony IAWC Michael J. Hoffman. Staff witness Bonita A. Pearce testified that, based on her review of the accounting entries proposed by Mr. Hoffman, as detailed on IAWC Exhibit MJH-1.1, she had no objection to the accounting entries proposed and saw no reason why the Commission should not approve them. Staff Ex. 2.0 at 2.

2. Operating Revenues and Expenses

IAWC proposed that the Peoria District's depreciation rates, as now in effect or as subsequently revised, be applicable to the Expanded Area. IAWC Exhibit MJH-1.0, at 3. Staff witness William R. Johnson stated that IAWC's proposed water depreciation rates should be approved for the Expanded Area since it is contiguous to the Peoria District and will be provided water service by the Peoria District water facilities. Staff Ex.

4.0 at 3-4. Mr. Johnson stated that IAWC's water depreciation rates were last set in 2003,¹ and are currently being reviewed by the Commission. Id. Rural Route 150 District witness Dennis Hermann did not address depreciation rates.

E. Proposed Certificated Service Areas

Mr. Sperry stated that the proposed certificated service area is just over 2 square miles (1352 acres) located west of Peoria, legally described in Exhibit A of the Petition and IAWC Exhibit FLR 1.1. Staff Ex. 1.0R at 10. Mr. Sperry observed that the area consists of residential homes along U.S. Route 150 and other roadways, as well as residential homes in the Berkshire Estates Subdivision. Id. In Mr. Sperry's opinion, it is reasonable for the Commission to approve a Certificate for IAWC to provide water service to the Expanded Area identified in IAWC Exhibit FLR 1.1 and Exhibit A of the Petition. Id.

F. Rules, Regulations, and Conditions of Service

Mr. Sperry reviewed the proposed rules and regulations to govern the Company's water operations in the Expanded Area. Staff Ex. 1.0R at 11. Mr. Sperry testified that he agreed with these rules and regulations, and that they are consistent with rules that have recently been approved by the Commission for other utilities. Id.

G. Miscellaneous requirements

Mr. Sperry understands it to be the case that IAWC has obtained all required permits from the IEPA for the construction of the proposed water main extensions in the

¹ Order at 16, Illinois-American Water Company: Proposed general increase in water and sewer rates, ICC Docket No. 02-0690 (August 12, 2003); aff'd, Illinois-American Water Company v. Commerce Comm'n, Appeal No. 3-04-0092 (Ill. App. Ct. 3rd Dist. 2004)

Expanded Area. Staff Ex. 1.0R at 12. Mr. Sperry is informed and confident that that IAWC will acquire all required easements, if necessary, once final design of the proposed water main extension is completed and private landowners are identified, and IAWC will follow the provisions of 83 Ill. Adm. Code Part 300 of the Commission's rules. Id. Mr. Sperry is also of the opinion that the company will be able to provide service at a water pressure that meets or exceeds recommended levels set in Commission rules. Id.

H. Rural Route 150's Objections to Certification

The sole contested issue in this proceeding is the assertion of intervenor Rural Route 150 Water District (hereafter "RR150") that, if IAWC receives a Certificate to serve in the proposed certificated service area, this will undermine the feasibility of RR150 to serve customers in the area. RR150 Ex. 1.0 at 5. According to RR150, this is because IAWC would serve that portion of RR150's proposed service area with the densest concentration of potential customers, and hence the lowest cost to serve. Id. RR150 urges the Commission to deny IAWC's Petition, and to decline to certify it to serve in the proposed certificated service area, as contrary to the best interests of the public. Id. The Staff nonetheless recommends that the Commission grant IAWC the Certificate it seeks.

Staff witness Jonathan M. Sperry testified that IAWC has demonstrated that there is a need for water service. Staff Ex. 1.0R at 6, 13. This is based on the testimony of IAWC Witness Frederick L. Ruckman that the Company has received a request for service from three customers and one of those potential customers has made a deposit. IAWC Ex. FLR-1.0 at 3. In addition, nearby residential developments are currently served by individual wells, which can be unreliable and subject to contamination. Tr. at

36. Mr. Ruckman stated that the Company has not, to date, entered into any agreements to provide water service, Tr. at 33, but indicated that the Company does not normally wait to have a request from each potential customer prior to requesting a Certificate for that area. Tr. at 49.

Mr. Sperry testified that there are no utilities regulated by the Commission that currently possess a Certificate to provide water service anywhere within Peoria County, and no other water utility, municipal corporation, or other entity in the area presently serves, or has the present ability to provide water service in the proposed certificated service area. Staff Ex. 1.0R at 6-7. Although RR150 has an interest in serving water customers in its existing territory, it currently does not serve any customers nor does it possess a water supply, treatment, or distribution system, and as such has no present ability to provide water service to any customers. Id. If IAWC is granted a Certificate, Mr. Sperry stated that RR150 will remain free to serve willing customers within its territory in the event that it obtains the water supply, treatment, and distribution system that will enable it to do so. Id. at 8. Rural Route 150 District witness Dennis S. Hermann testified that there would be a negative impact on RR150's ability to be viable and serve customers if IAWC were allowed to expand into the RR150's territory; Mr. Hermann based his opinion on a 2003 feasibility study. RR150 Ex. 1.0 at 5. However, it is apparent that RR150 proposes to expand its boundaries beyond that included in the 2003 feasibility study, ALJ Exhibit No. 1, so there is reason to conclude that the 2003 study no longer constitutes a reliable basis for Mr. Hermann's opinion of RR150's viability.

There appears to be no question that a substantial number of Illinois citizens living in the proposed certificated service area, and elsewhere in the area RR150 proposes to serve, lack access to a safe, clean and adequate supply of water. RR150 Ex. 1.0, *generally*; IAWC Exhibit FLR 1.0 at 5. IAWC proposes to provide a substantial number of these citizens with such a water supply immediately upon certification and construction of facilities enabling it to do so, and moreover, possesses the present ability to accomplish this task. In contrast, RR150, while it proposes to serve all such customers, lacks the facilities and present ability to serve *any* customers. Under these circumstances, securing a safe, clean and adequate supply of water for a substantial number of affected people in the short term appears to the Staff to be preferable, on the “bird in the hand” theory, to proceeding on the assumption that RR150 will be able to serve all of such customers at some indeterminate time in the future. Staff accordingly recommends that RR150’s objections to certification be rejected.

I. Staff’s Overall Recommendation

In Staff’s opinion, IAWC has met its burden of demonstrating to the Commission that it is in compliance with the requirements for issuance of a Certificate to provide water service to the proposed certificated service area, without significant adverse financial consequences for the company or its customers, and that it is that there is a need for water service and that IAWC can provide that service on a least-cost basis. Further, the Staff is of the opinion that the company is capable of efficiently managing and supervising construction of the proposed water main extension. Accordingly, Staff recommends that IAWC be granted a Certificate, and that the area covered by the Certificate include all of the requested Expanded Area.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Staff of the Illinois Commerce Commission respectfully requests that Commission issue a Certificate of Convenience and Necessity as requested to IAWC and adopt Staff's recommendations in its Order in this matter.

Respectfully submitted,



April 24, 2008

Matthew Harvey
James V. Olivero
Counsel for the Staff

MATTHEW HARVEY
JAMES V. OLIVERO
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle, Ste. C-800
Chicago, IL 60601
Phone: (217)793-3243

527 East Capitol Avenue
Springfield, IL 62701
Phone: (217) 785-3808
Fax: (217) 524-8928

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